



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 2, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0319

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Allegation Removed

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

EXECUTIVE SUMMARY:

The Complainant alleged that Named Employee #1 and Named Employee #2 engaged in biased policing and that Named Employee #3 was unprofessional.

SUMMARY OF INVESTIGATION:

The Complainant alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) failed to take appropriate action when they responded to her 911 call regarding two individuals – a man and a woman – who were drinking alcohol in a vehicle. The Complainant specifically stated that the officers only checked the identification of the male – who she described as a person of color – and did not take similar investigatory action towards the female – who she said was White. The Complainant asserted that the officers' failure to request identification from the woman – who the Complainant described as "openly" consuming alcohol "behind the wheel" – constituted biased policing. The Complainant lastly contended that the attempts of Named Employee #3 (NE#3) to respond to her articulated concerns were insufficient and that this constituted unprofessionalism.

OPA's investigation indicated that NE#1 and NE#2 responded to a 911 call of a male and a female drinking alcohol inside of their own vehicles. Both the male and female were described as being White. OPA reviewed Body Worn Video (BWV) and determined that NE#1 contacted the two individuals. At that time, the male was standing between two parked vehicles. From OPA's review of the video, the male's race was indeterminate. The male was holding a full glass of what appeared to be beer and there was a growler at his feet. The female was seated in the driver's seat of a vehicle. She appeared to be White. The engine of her vehicle did not appear to be running and no alcohol was visibly in her possession.

NE#1 spoke with both individuals and explained his concern that the male might try to drive after consuming alcohol. NE#1 further stated that it was illegal to drink in public. NE#1 acknowledged that it was an unusual time and that



everyone was trying to adjust. Notably, this incident occurred in May when in-person dining was prohibited due to Covid-19. The male told NE#1 that he only lived a few blocks away and stated that he would leave the alcohol there and walk home. The male offered to show his driver's license to NE#1 and then handed it to him. NE#1 looked at the driver's license and gave it back to the male. NE#1 ended the contact by issuing a verbal warning to the male for having an open container of alcohol in a public place.

The video indicated that NE#2 was the backing officer on the call and did not have contact with the subjects.

The Complainant was the original 911 caller. The Complainant filmed the encounter from a 5th floor apartment above the parking lot. When the Complainant was narrating her video, she described both subjects as white. The audio on the video is faint and the male and female are not visible as tree foliage blocks the camera view. No alcohol can be seen in the video. The Complainant then called SPD Dispatch to complain about the incident and was connected with NE#3. NE#3 documented and reviewed the incident by completing a Bias Review and provided the Complainant with the names and badge numbers of the involved officers and provided her with OPA's contact information. The Complainant told OPA that she was not satisfied with how NE#3 handled the incident.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

There is no evidence supporting the Complainant's allegation that NE#1 engaged in biased policing when he checked the male's identification. Indeed, the Complainant's assertions are conclusively disproved by the BWV. The video established that NE#1 did not ask the male for identification and that, instead, the male affirmatively offered to provide it. Moreover, the video indicated that there was no alcohol in the female's possession and, as such, there would have been no lawful reason to request her identification.

OPA struggles to understand the purpose of this complaint, particularly given that it was unclear from the Complainant's video that anyone was actually drinking alcohol behind the wheel of a car and because she initially described both parties as White. Regardless, the evidence indicates that it is without merit and, as such, OPA recommends that it be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #2 - Allegation #1

5.140 – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

As the video indicated that NE#2 did not have contact with either the male or the female and did not take any police action beyond being the backing officer, OPA recommends that this allegation be removed.



Recommended Finding: **Allegation Removed**

Named Employee #3 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD policy states that “Employees Shall Strive to be Professional.” The Complainant alleged that NE#3’s response to her concerns was unsatisfactory, which OPA construed as an allegation of unprofessionalism.

There is no evidence that supports the Complainant’s allegation of unprofessionalism on NE#3’s part. NE#3 documented and reviewed the incident by completing a Bias Review that was reviewed by the chain of command. NE#3 also provided the Complainant with the officers’ names and badge numbers and provided her with contact information for OPA. As such, OPA concludes that NE#3 fulfilled his obligation as a supervisor and did not violate the Department’s professionalism policy.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**